

SCHLICHTER & SHONACK, LLP
STEVEN C. SHONACK, (CA SBN 173395)
KURT ANDREW SCHLICHTER, (CA SBN 172385)
MARY E. NEIFERT, (CA SBN 237062)
3601 Aviation Boulevard, Suite 2700
Manhattan Beach, CA 90266
Telephone: (310) 643-0111
Fax: (310) 643-1638
scs@sandsattorneys.com
kas@sandsattorneys.com

Attorneys for Defendant FRIT
ESCONDIDO PROMENADE, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LARRY MCIVER,

Plaintiff,

v.

TARGET CORPORATION dba
TARGET #274; COST PLUS, INC. dba
COST PLUS WORLD MARKET #145;
FRIT ESCONDIDO PROMENADE,
LLC; LA SALSA, INC. dba LA SALSA
#93; APPLEBEE'S RESTAURANTS
WEST, LLC dba APPLEBEE'S
NEIGHBORHOOD BAR & GRILL
#5711; TOYS 'R' US – DELAWARE,
INC. dba TOYS 'R' US #5633; PARTY
CITY CORPORATION dba PARTY
CITY OF ESCONDIDO #445;
INLAND WESTERN MDS
PORTFOLIO, LLC,

Defendants.

) USDC No. 08 CV 0132 IEG WMc
) Complaint Filed: January 23, 2008
)
) **DEFENDANT FRIT ESCONDIDO**
) **PROMENADE, LLC'S NOTICE OF**
) **MOTION AND MOTION TO**
) **DISMISS STATE LAW CLAIMS**
) **AND DECLINE SUPPLEMENTAL**
) **JURISDICTION [28 U.S.C. § 1367]**

) Date: April 28, 2008
) Time: 10:30 a.m.
) Courtroom: 1
) Judge: Hon. Irma E. Gonzalez

DEFENDANT FRIT ESCONDIDO PROMENADE, LLC'S NOTICE OF
MOTION AND MOTION TO DISMISS STATE LAW CLAIMS AND DECLINE
SUPPLEMENTAL JURISDICTION

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

2
3 PLEASE TAKE NOTICE THAT Defendant FRIT ESCONDIDO
4 PROMENADE, LLC (“Defendant”), at the hour of 10:30 a.m. on April 28, 2008,
5 in Courtroom 1 of the above-entitled court located at 940 Front Street
6 San Diego, CA 92101-8900, shall move the Court for an order dismissing the state
7 law claims asserted against Defendant in this action and declining supplemental
8 jurisdiction over said claims pursuant to FRCP 12(b)(1) and 28 U.S.C. § 1367.

9 This Motion is made on the grounds that the Court should decline to exercise
10 supplemental jurisdiction over the state law claims asserted by Plaintiff in this
11 action, alleging violations of the California Disabled Persons Act, the Unruh Civil
12 Rights Act, and the California Health & Safety Code, and should dismiss said
13 claims, because they present a novel and complex issue of state law that should be
14 determined by the courts of the State of California.

15
16 This Motion is based upon this notice, the concurrently filed memorandum
17 of points and authorities, the concurrently filed proposed order, all documents and
18 pleadings on file with the Court in this matter, and upon such oral and documentary
19 evidence as may be presented at the hearing of this motion, if any.

20
21 Dated: March 13, 2008

SCHLICHTER & SHONACK, LLP

22
23 /s/ - Steven C. Shonack

24 By: KURT A. SCHLICHTER

STEVEN C. SHONACK

25 Attorneys for Defendant FRIT

26 ESCONDIDO PROMENADE, LLC

**MOTION TO DISMISS STATE LAW CLAIMS AND DECLINE
SUPPLEMENTAL JURISDICTION**

Defendant FRIT ESCONDIDO PROMENADE, LLC (“Defendant”), by counsel, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1367, hereby requests that the Court decline to exercise supplemental jurisdiction over the following claims asserted against this moving Defendant, and moves for an order dismissing the following claims from the action as asserted against FRIT ESCONDIDO PROMENADE, LLC:

1. The Thirtieth Claim under the Disabled Persons Act (Section XXXV of the Complaint, at ¶¶ 342-348),
2. The Thirty-First Claim under the Unruh Civil Rights Act (Section XXXVI of the Complaint, ¶¶ 349-356),
3. The Thirty-Second Claim for Denial of Full and Equal Access to Public Facilities (Section XXXVII of the Complaint, ¶¶ 357-361), and
4. Any and all state law claims under the Disabled Persons Act, the Unruh Civil Rights Act, and/or for Denial of Full and Equal Access to Public Facilities as asserted in this action, to the extent that such claims are intended to apply, may apply, or actually apply, to FRIT ESCONDIDO PROMENADE, LLC.

Dated: March 13, 2008

SCHLICHTER & SHONACK, LLP

/s/ - Steven C. Shonack

By: KURT A. SCHLICHTER

STEVEN C. SHONACK

Attorneys for Defendant FRIT

ESCONDIDO PROMENADE, LLC